

**Central Consumer Protection Authority**

**Ground Floor, CCPA Wing, Indian Institute of Public Administration, IP Estate,  
Ring Road, New Delhi, 110002**

**Case No: J-25/20/2021-CCPA**

In the matter of: Suo-moto case with regard to advertisements of Sensodyne Products

CORAM:

Ms. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

Date: 14.03.2022

**ORDER**

1. In the present case, the Central Authority has already issued an Interim Order on 09.02.2022, the operative part of which is reproduced below:-

*"15 (a) Opposite party shall discontinue all advertisements for Sensodyne product in India which show dentists practicing outside India endorsing the product within 7 days in terms of Section 21 (1) of the Consumer Protection Act, 2019.*

*(b) Director General (Investigation) shall conduct investigation of the claims "Recommended by dentists worldwide", "World's No. 1 sensitivity toothpaste" and "clinically proven relief, works in 60 seconds" and the documents submitted by the company in support of the claims and submit its report within 15 days."*

2. In terms of the directions passed by the Central Authority in clause (b) of Para 15 of the aforesaid Order, a reference was made to the Director General (Investigation) for investigation of the claims referred to therein. Vide communication email dated 08.03.2022, the Director General (Investigation) has advised that inputs may be sought from Central Drugs Standard Control Organisation (CDSCO).
3. It may be mentioned that, the Drug Controller General of India, CDSCO was already requested to furnish their comments about the correctness of the claims made by the GlaxoSmithKline (GSK) Asia Pvt. Ltd regarding its product which claims that "Sensodyne is clinically proven to relieve the sensitivity of

teeth, works in 60 seconds" vide CCPA's D.O. Letter no J-25/20/2021-CCPA dated 02.06.2021.

4. In response to the D.O. Letter by CCPA, comments as received from the Drug Controller General of India, (CDSCO) vide D.O. Letter No.- COS/MISC/42/21 dated 09.07.2021 are extracted below :-

*"2. In this regard, it may be mentioned that, the clause 3(aaa) of the Drugs and Cosmetics Act, 1940 defines cosmetics "any article intended to be rubbed, poured, sprinkled or sprayed upon, or introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting, attractiveness, or altering the appearances and includes any article intended for use as a component of cosmetic".*

*"3. As per rule 36 of the Cosmetics Rules, 2020 effective from 15.12.2020 "No cosmetic may purport or claim to purport or convey any idea which is false or misleading to the intending user". Before, implementation of Cosmetics Rules, 2020 the manufacturer, import of cosmetic was regulated under the Drugs and Cosmetics Rules, 1945".*

*"4. The product under question is manufactured under cosmetic licence granted by the State Licensing Authority, Silvassa under the Drugs and Cosmetics Rules, 1945".*

*"5. The label of the said product claims to be "clinically proven to relieve the sensitivity of teeth, works in 60 seconds and provides proven relief from the sensation caused by sensitive teeth and provides long-lasting sensitivity protection".*

*"6. Under the provisions of Drugs and Cosmetics Act, 1940 and rules made thereunder, claim for a cosmetic product like "clinically proven to relieve the sensitivity of teeth, works in 60 seconds and provides proven relief from the sensation caused by sensitivity teeth and provides long-lasting sensitivity protection" cannot be made".*

*"7. Further, it is pertinent to mention here that the data and literature has not been reviewed/ examined/ validated by the Authority before granting of license. Therefore, the matter may be referred to the State Licensing Authority, Silvassa who has granted the license to manufacture the product as cosmetic to take action under the provisions of the Drugs and Cosmetics Act, 1940 and rules made thereunder."*

5. Thereafter, the Central Authority had requested the Drug Controller General of India, (CDSCO) vide D.O. No. J-25/20/2021-CCPA dated 27.07.2021 to refer the matter to State Licensing Authority, Silvassa.

6. Reply was received from CDSCO HQ dated 06.08.2021, as copy marked to CCPA, directing investigation of claims made in the advertisement of Sensodyne products by Assistant Drug Controller, Licensing Authority, Silvassa since the product in question is being manufactured under the cosmetic license granted by the State Licensing Authority of Silvassa.
7. Further, reply was received from Assistant Drug Controller, Licensing Authority, Silvassa, as copy marked to CCPA, vide Letter No. - DMHS/ADC/DNH/2020-2021/9572 dated 11.12.2021 along with copy of notice no. DMHS/ADC/DNH/2020-2021/7889 dated 27.09.2021 issued to the opposite party for misleading advertisement of Sensodyne products.

In the notice dated 27.09.2021, it has been stated that :-

*"Whereas it has been brought to the notice that under the Provision of Drug and Cosmetic Act and Rules thereunder, claim for a cosmetic product like clinically proven to protection cannot be made.*

*Therefore you are directed to stop such claim and submitted details of distribution and sale along with address where such product with alleged claim has been distributed.*

*You are hereby ask furnish, justification and clarification as to why your product permission with above claim shall not be stopped and product mfg. with such label claim shall not be recalled"*

In Letter No. - DMHS/ADC/DNH/2020-2021/9572 dated 11.12.2021, it is stated that:-

*"It was submitted by the firm that the claim clinically proven relief and daily protection for sensitive teeth discontinued since December 2020 for the Sensodyne product*

*Firm has sought personal hearing in this matter. Further action will be initiated after hearing process."*

8. Further, comments received from Drug Controller General of India, CDSCO vide their D.O. Letter No.- COS/MISC/42/21 dated 23.12.2021 are extracted below:-

*"2. In this regard, it is informed that this Directorate vide email dated 10.12.2021 sought information from State Licencing Authority, Silvassa on action taken regarding misleading advertisement by M/s. GlaxoSmithKline Consumer Healthcare Ltd on its product "Sensodyne (Rapid relied & Fresh*

Gel)- Sensodyne is clinically proven to relieve the sensitivity of teeth, works in 60 seconds”.

3. In its response State Licencing Authority, (SLA), Silvassa has informed vide their letter dated 11.12.2021 that they had initiated necessary action against the firm in respect of the subject matter”.

4. In light of the issue, the State Licencing Authority has asked the firm on 27.09.2021 to submit details of distribution and sale along with address where such product with alleged claimed has been distributed. Subsequently, the State Licencing Authority has directed the firm to stop such claim”.

5. The State Licensing Authority has further informed that the claims clinically proven relief and daily protection for sensitive teeth had been discontinued by the firm since December 2020 for the sensodyne product. Further the firm has sought personal hearing with SLA, Silvassa and further action will be initiated by SLA, Silvassa after the hearing process.”

9. Therefore, in view of the communication received from CDSCO and Assistant Drug Controller, Licensing Authority, Silvassa as regards the claim of the opposite party that "Sensodyne is clinically proven to relieve the sensitivity of teeth, works in 60 seconds", the matter now rests with Assistant Drug Controller, State Licensing Authority, Silvassa.

10. With regard to the two claims made by the opposite party i.e., "world's no. 1 sensitivity toothpaste and "recommended by dentists worldwide", the opposite party's written response dated 25.03.2021 is stated below:-

*“28.1 Ipsos GmbH was commissioned by GlaxoSmithKline Service Unlimited to conduct a claim test in India. The objective of the study was to determine dentist's recommendation for toothpaste for sensitive teeth to gauge if Sensodyne toothpaste is the No. 1 dentist recommended brand for sensitive teeth, so to make claims for advertising and communication purposes. The said survey was conducted between 23 September 2020 to 14 October 2020. The said survey concluded that dentists in India recommend Sensodyne toothpaste to patients who suffer from Sensitive Teeth, and that Sensodyne is the No. 1 dentist recommended toothpaste brand for sensitive teeth. Statistically more dentists in the sample recommended Sensodyne Toothpaste most often to patients who suffer from Sensitive Teeth than the next best competitor at 95% confidence level (41% vs 22%). Copy of the Letter dated 9 December 2020 issued by Ipsos GmbH communicating survey result is annexed herewith as ANNEXURE F.*

*28.2 GfK SE was commissioned by GlaxoSmithKline Services Unlimited to conduct a claim test to determine dentist's recommendation for*

*toothpastes for sensitive teeth, to gauge if Sensodyne is the no.1 Dentist recommended toothpaste brand for Sensitive Teeth, so to make claims for advertising and communication purposes. The survey was conducted between May to June 2018. The survey concluded that Dentists in India recommend SENSODYNE toothpaste to patients who suffer from Sensitive Teeth, and that Sensodyne is the No. 1 Dentist recommended toothpaste brand for Sensitive Teeth, statistically more Dentists in the sample recommended Sensodyne Toothpaste most often to patients who suffer from Sensitive Teeth than the next best competitor at 95% confidence level (27% vs 21%). Copy of the Letter dated 18 July 2018 issued by Gfk SE communicating the survey result is annexed herewith as ANNEXURE G.”*

11. Further, as per Annexure F, the opposite party got a survey conducted by Ipsos GmbH in India during the period from September to October 2020 with a view to determining dentist recommendation for toothpaste for sensitive teeth. The sample source was 600 qualified Dentist. As per the survey report, the survey result of the study are as under:-

*a. Dentists in India recommend Sensodyne Toothpaste to patients who suffers from Sensitive Teeth, and that*

*b. Sensodyne is the no. 1 Dentist recommended toothpaste brand for Sensitive Teeth. Statistically more Dentists in the sample recommend Sensodyne Toothpaste most often to patients who suffer from Sensitive Teeth than the next best competitor at 95% confidence level(41% vs 22%).*

12. Perusal of Annexure G shows that the opposite party got a market survey conducted by GfK SE in India during the period from May to June 2018 for determining dentist recommendation for toothpaste for sensitive teeth. The sample source was 602 qualified Dentist. As per the survey report, the result of the study are as under:-

*a. Dentists in India recommend Sensodyne Toothpaste to patients who suffers from Sensitive Teeth, and that*

*b. Sensodyne is the no. 1 Dentist recommended toothpaste brand for Sensitive Teeth. Statistically more Dentists in the sample recommend Sensodyne Toothpaste most often to patients who suffer from Sensitive Teeth than the next best competitor at 95% confidence level (27% vs 21%)*

13. “Misleading advertisement” has been defined in under Section 2(28) of the Consumer Protection Act, 2019 -

*“2 (28) "misleading advertisement" in relation to any product or service, means an advertisement, which—*

*(i) falsely describes such product or service; or*

*(ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or*

*(iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or*

*(iv) deliberately conceals important information"*

14. In this connection, it is pertinent to point out that the above two market surveys relied upon by the company for the claims "world's no. 1 sensitivity toothpaste" and "recommended by dentists worldwide" show that the market survey were conducted only in India. The surveys do not reflect any worldwide or global opinion with respect to use of Sensodyne product. No cogent study has been presented to substantiate the claim of worldwide prominence of Sensodyne product.
15. Thus claiming "recommended by Dentist worldwide" and "world's no.1 sensitivity toothpaste" without any cogent study or material on record to substantiate the claim is grossly false and misleading, bereft of any justification.
16. By making such unfounded claims, the opposite party is trying to attract a very large number of consumers by creating an impression that no other product is comparable with their product and thereby trying to unfairly promote sale of their product. As a result, consumer susceptibility around teeth sensitiveness is being exploited by the company by such false and misleading advertisements.
17. Since the claim gives an impression of recommendation by dentists, who are doctors specialized in treating diseases affecting teeth, the magnitude of impact of the claim "recommended by dentists worldwide" is undeniably significant.
18. The opposite party has been broadcasting the advertisement with the claims "recommended by Dentist worldwide" and "world's no.1 sensitivity toothpaste" on various platforms including Television, Youtube, Facebook and other online platforms, it has been inducing viewers to make buying decision by gaining the confidence of the consumers at large using unfair means. It is pertinent to mention here that, company has provided a false picture as well as misguided the general public, just to get the attention towards their product and to increase their sales. In view of the foregoing, it is clear that this is a case of misleading advertisement and is fit for class action.



19. In fact, on social media platforms the publicity of the advertisement was facilitated on continuing basis (on 24/7 basis) throughout the length and breadth of the country. The repeated telecast of the advertisement on Television is capable of causing undue influence on the general public with regard to the utility of the product.
20. Consumers, especially those facing sensitivity of teeth are lured to believe the false notion that the product advertised is of best quality (No.1) available in the entire world.
21. Even the CDSCO, Regulator Body, in respect of Drugs and Cosmetics has also pointed out the following:-
- *"As per rule 36 of the Cosmetics Rules, 2020 effective from 15.12.2020 "No cosmetic may purport or claim to purport or convey any idea which is false or misleading to the intending user". Before, implementation of Cosmetics Rules, 2020 the manufacturer, import of cosmetic was regulated under the Drugs and Cosmetics Rules, 1945".*
  - *"Under the provisions of Drugs and Cosmetics Act, 1940 and rules made thereunder, claim for a cosmetic product like "clinically proven to relieve the sensitivity of teeth, works in 60 seconds and provides proven relief from the sensation caused by sensitivity teeth and provides long-lasting sensitivity protection" cannot be made".*
22. Without credible market survey data, the opposite party cannot be allowed to make such false and misleading claims. Making such claims will unquestionably create a false impression in the mind of consumers. In view of foregoing, it would be in the fitness of things to impose the maximum permissible penalty upon the opposite party.
23. In view of the above, the Central Authority hereby passes the following directions :-
- a) Advertisements for Sensodyne product on all platforms, including digital platforms which show claims "Recommended by dentists worldwide" and "World's No. 1 sensitivity toothpaste" within 7 days in terms of Section 21 (1) of the Consumer Protection Act, 2019.
  - b) Further, keeping in view that the impugned advertisement is prejudicial to the interest of Consumer, the Central Authority is of the considered opinion that it

is also necessary to impose penalty on the opposite party. Therefore, penalty amounting to of ₹10,00,000 is imposed upon the opposite party under Section 21(2) of the Consumer Protection Act, 2019

  
.....14/3/2022  
Nidhi Khare  
(Chief Commissioner)

  
.....  
Anupam Mishra  
(Commissioner)



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(GlaxoSmithKline (GSK) Asia Pvt. Ltd.)

CORAM:

Ms.Nidhi Khare, Chief Commissioner

Mr.Anupam Mishra, Commissioner


Date: 16.03.2022

**ORDER**

In the order dated 14<sup>th</sup> March 2022, para 23(a) will be read as:-

“Opposite Party shall discontinue the Advertisements for Sensodyne products on all platforms, including digital platforms which show claims “Recommended by dentists worldwide” and “World’s No. 1 sensitivity toothpaste” within 7 days in terms of Section 21 (1) of the Consumer Protection Act, 2019”

  
.....  
Nidhi Khare  
(Chief Commissioner)

  
.....  
Anupam Mishra  
(Commissioner)